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Counsel for the Official Committee Of  
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,  
USA CAPITAL REALTY ADVISORS, LLC,  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
USA SECURITIES, LLC,

Debtors.

**Affects:**

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☒ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**Partial Objection of USACM Trust To Robert Lange and Robert R. Lange Family Trust Claims to the Extent Filed in Wrong Debtor's Case and as Duplicative; Objection of FTDF to Proposed Allowance of Claim**

Hearing Date: October 15, 2007  
Hearing Time: 9:30 a.m.

Robert Lange, through Bernard Lange as Attorney in Fact for the deceased Robert Lange (“Lange”) filed Proof of Claim No. 10725-01469 against USA Commercial Mortgage Company (“USACM”) in the amount of \$150,000.00. The Robert R. Lange Family Trust (“Lange Trust”) also filed Proof of Claim No. 10725-01476 against USACM in the amount of \$150,000.00. The proof of claim attachments show that both claims are based on the same two transactions: a \$50,000 direct loan by the Lange Trust serviced by USACM and a \$100,000 equity investment by the Lange Trust in USA Capital First Trust Deed Fund, LLC (“FTDF”). The USACM Liquidating Trust (the “USACM Trust”) hereby objects at this time to (1) the duplicative claims; both are based on transactions by Lange on behalf of the Lange Trust; and (2) the portion of the Lange and Lange Trust claim that is based on the FTDF equity investment. The USACM Trust files this objection without waiving the right to file additional objections to the substance of the USACM portion of the claim later. To the extent based on the FTDF investment, the duplicative Lange and Lange Trust claims are claims that were incorrectly filed in the USACM case.

The USACM Trust respectfully requests that (1) the Lange claim be stricken as duplicative of the Lange Trust claim, and (2) the FTDF investment portion of the remaining Lange Trust claim be disallowed as a claim against USACM. Any claim held by Lange or the Lange Trust against USACM solely on account of an investment in FTDF is derivative of FTDF’s claims against USACM. Under a settlement approved by the Court on June 12, 2007, all such FTDF claims were settled, with FTDF holding a \$7.0 million allowed general unsecured claim and beneficial interest in the USACM Liquidating Trust. The equity interest holders in FTDF will share in any recovery on account of that claim.

The Official Committee of Equity Security Holders of FTDF (“FTDF Committee”) further objects to allowance of the Lange claim since (1) it is are duplicative of the Lange Trust claim; and (2) the FTDF equity interest is held in the name of the Lange Trust alone.

Second, the FTDF Committee objects to allowance of the remaining Lange Trust claim insofar as it is classified as a claim against the FTDF estate.

Bankruptcy Code section 502 authorizes a party in interest to object to claims. See 11 U.S.C. § 502(a). Upon such objection, this Court, "after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition . . . ." 11 U.S.C. § 502(b). Although a proper proof of claim is presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the presumption, the creditor has the ultimate burden of persuasion as to the validity and amount of the claim. Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.), 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996) (quoting In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

The FTDF Committee has analyzed the Lange Trust claim and has determined that it has been incorrectly designated as a "proof of claim." Pursuant to Bankruptcy Code section 502, a "creditor . . . may file a proof of claim." An equity security interest holder, however, must file a proof of interest. See 11 U.S.C. § 501(a). Bankruptcy Code section 101(16) defines "equity security" to include a "share in a corporation, whether or not transferable or denominated 'stock', or *similar security*" or a "warrant or right . . . to purchase, sell, or subscribe to a share, security, or interest" of a share in a corporation. 11 U.S.C. § 101(16) (emphasis added). See also Nev. Rev. Stat. §86.521 (upon dissolution of a limited liability company, a limited liability company must pay liabilities to creditors before paying liabilities in respect of profits and/or capital to members of the limited liability company).

The Lange Trust claim clearly reflects that it is based on its membership in the FTDF and not based on any debt the claimants hold against the FTDF. For example, annexed to the Lange Trust claim are account statements that list the number of shares the Lange Trust holds in the FTDF, the price of such shares, and the FTDF Member's account

1 identification number. Membership interests and/or shares in the FTDF clearly fall within  
2 the definition of "equity security" under Bankruptcy Code section 101(16). Thus, the  
3 holders of the equity interests are equity security interest holders of the FTDF and do not  
4 hold unsecured claims against the FTDF estate.

5 This objection does not seek to prejudice the rights of the Lange Trust as an FTDF  
6 member to recover from the FTDF estate on account of its membership interest of  
7 \$100,488.50, which slightly exceeds the amount asserted in the Lange Trust claim. The  
8 Lange Trust shall retain its interest in FTDF in the amount of \$100,488.50 as reflected in  
9 the books and records of FTDF. Indeed, the Lange Trust has received distributions based  
10 on this FTDF membership interest to date, with no objection.

11 Accordingly, the USACM Trust and the FTDF Committee seek entry of an order  
12 that will disallow the Lange Trust claims against USACM, disallow any proposed  
13 allowance of the Lange Trust claims in the FTDF case, and appropriately allow the Lange  
14 Trust to retain its equity interest in the FTDF in the amount of \$100,488.50 as reflected in  
15 the books and records of FTDF as of the bankruptcy petition filing date.

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1 This objection is made pursuant to Bankruptcy Code section 502, Federal Rule of  
2 Bankruptcy Procedure 3007, and Local Rule of Bankruptcy Practice 3007.

3 Dated: August 8, 2007

4  
5 By: /s/ Eve H. Karasik  
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19 OFFICIAL COMMITTEE OF EQUITY  
20 SECURITY HOLDERS  
21 OF USA CAPITAL FIRST TRUST DEED  
22 FUND, LLC

20 Copy of the foregoing  
21 Mailed this 8th day of  
22 August, 2007 to:

23 Robert Lange and  
24 Robert R. Lange Family Trust  
25 c/o Bernard Lange  
26 7915 Helena Ave.  
Las Vegas, NV 89129

By /s/ Renee L. Creswell